IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

GRUBB & ELLIS|CENTENNIAL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 3:03-0016**
	)	
GAEDEKE HOLDINGS, LTD. and GAEDEKE LANDERS, L.L.C.,	)	**Judge Campbell Magistrate Griffin**
	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM REGARDING AMOUNT OF JUDGMENT TO BE AWARDED TO PLAINTIFF

Plaintiff submits this Memorandum in accordance with this Court's Memorandum (Docket No. 79) and Order (Docket No. 80) entered herein on August 12, 2005. The Court instructed the parties in that Order to submit briefs regarding the following issues in connection with the Court's rulings on the parties' Renewed Motions For Summary Judgment:

1. The amount of commissions due to Plaintiff;
2. Plaintiff's request for attorneys' fees;
3. Plaintiff's request for pre-judgment interest; and
4. Whether Plaintiff's claim for a commission involving Bridgestone's possible execution of a lease in 2009 of different parts of the Defendants' property is within the contemplation of the Leasing Brokerage Agreement between the parties (the "Listing"), and is otherwise ripe for decision by the Court at this time.

Plaintiff's position on each of those issues is set forth below. Plaintiff has also filed the Affidavit of Gerald D. Neenan, Plaintiff's Application For An Award Of Attorneys' Fees And Litigation Expenses, and the Affidavit of John Crow, which are incorporated herein by reference.

I. PLAINTIFF'S INITIAL COMMISSION IS $270,254.46.

There should not be any dispute regarding the amount of the initial commission owed to Plaintiff. Exhibit 1 to the Stipulation Of Facts For Cross Motions For Summary Judgment, Docket No. 33, is the Leasing Brokerage Agreement between Plaintiff and Defendants (the "Listing"). Schedule C of the Listing specifies in paragraph B that, for a new lease where the tenant has a broker, Defendants owe a 5.5% leasing commission. Exhibit C to the Listing divides commissions into two categories: the initial commission, based on the rent to be paid by the tenant during the initial term of the Lease (specified in paragraphs A and B of Exhibit C); and additional commissions that may become due for extensions of the term of the Lease or expansions of the leased premises (specified in paragraphs C through F of Exhibit C). After the lease with Bridgestone/Firestone Americas Holding, Inc. (Stipulation Exhibit 53) (the "Lease") was signed, Defendants paid a 5.5% commission, dividing it as follows: Defendants paid a 4% commission to Bridgestone's broker, Joe Cherry; and Defendants paid a 1.5% commission to themselves. Plaintiff accepts that, out of the 5.5% commission, a 4% commission could have been paid to Joe Cherry (Bridgestone's broker), leaving 1.5% commission for Plaintiff. (May 20, 2003 Affidavit of Barry R. Smith, Docket No. 15 ("First Smith Aff.") ¶7.)

According to Defendants' own calculations, a 1.5% commission on the Lease is $270,254.46. Since Defendants have already calculated this initial commission and paid it to themselves, Defendants cannot claim that there is any issue regarding the amount of the commission and Defendants cannot claim that the commission is not yet due and payable.

Defendants' calculation of the amount of the initial commission for the initial term of the Lease is set forth in Stipulation Exhibits 39 and 54. The total initial commission for floors 4, 5 and 7 is calculated on the first page of Stipulation Exhibit 39 as follows: total income over the initial term of the Lease for those floors is $10,503,672.00 and a 5.5% commission on that amount equals $577,701.96. On the second page of Exhibit 39, Defendants allocated that $577,701.96 commission for the initial term for floors 4, 5 and 7 as follows: a 4% commission to Bridgestone's broker; and a 1.5% commission, in the amount of $157,555.08, was paid to Defendants. The total initial commission for floors 8 through 12 is calculated on the fourth page of Stipulation Exhibit 39 as follows: total income over the initial term of the Lease for those floors is $7,513,292.00, and a 5.5% commission on that amount equals $413,231.06. The fifth page of Exhibit 39 shows that Defendants allocated the $413,231.06 commission for the initial term for floors 8 through 12 as follows: a 4% commission to Bridgestone's broker; and a 1.5% commission, in the amount of $112,699.38, was paid to Defendants. The total of the initial 1.5% commission for floors 4, 5 and 7 ($157,555.08) and the initial 1.5% commission for floors 8 through 12 ($112,699.38) is $270,254.46.

Comparing Defendants' commission calculations in Stipulation Exhibit 39 with page 4 of the Lease confirms that those commission calculations were based on the rent owed during the initial 84-month term of the Lease. The first page of Exhibit 39 shows that the commission for floors 4, 5 and 7 was based on total income for those floors of $10,503.672.00, and the fourth page of Exhibit 39 shows that the commission for floors 8 through 12 was based on total income for those floors of $7,513,292.00. Thus, the commissions calculated in Exhibit 39 were based on a total income for all these floors of $18,016,964.00. The Lease (Stipulation Exhibit 53), sets forth the base rent to be paid during the initial 84-month term of the Lease. Adding the annual total base rent figures in the far right column ("Annual Fixed Amount") of the table on page 4 of the Lease (Stipulation Exhibit 53, document No. GL00206) shows that the total base rent for the initial 84-month term of the Lease is $18,016,952.00. Thus, the initial 1.5% commission that

Defendants paid themselves ($270,254.46) was a 1.5% commission on the initial 84-month term of the Lease.

This Court asked the parties to address the question of how Plaintiff's commission claim will be affected if Bridgestone remains in the Tower after the initial 84-month term expires in 2009. Plaintiff's position on that issue is that, since the $270,254.46 commission that Plaintiff is seeking at this time is only for the initial term of the Lease, and does not include any commission on rents paid after the initial term, Plaintiff will be entitled to additional commissions if Bridgestone remains in the Tower after the initial 84-month term. That issue is further addressed in Section IV below.

This calculation of the commission currently owed to Plaintiff is based on the assumption that Bridgestone has not yet leased additional space or extended the term of the Lease, either of which would cause additional commissions to be due, as discussed in Section IV below.

II. PLAINTIFF IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES AND COSTS IN THE AMOUNT OF $130,778.06.

Plaintiff is entitled to an award of attorneys' fees and costs pursuant to paragraph 15.4 of the Listing, which provides that

> Attorney's fees. In the event that a dispute arises between Owner and Broker under the terms of this Agreement and such dispute results in judicial action, the prevailing party shall be entitled to recover as a part of such action its reasonable attorneys' fees and court costs. (Stipulation Exhibit 1.) [Emphasis added.]

Plaintiff is the prevailing party in this litigation within the meaning of paragraph 15.4, since this Court has awarded a summary judgment to Plaintiff and Defendants' counterclaim has been dismissed in its entirety. Paragraph 15.4 is mandatory, stating that the prevailing party "shall" be entitled to recover reasonable attorneys fees and court costs.

Plaintiff's opposition to Defendants' previous application for an award of attorneys' fees is not relevant here, because of the dramatic change in circumstances. In response to Defendants prior application for attorneys' fees, Plaintiff contended that Defendants could not recover attorneys fees under paragraph 15.4 because the entire Listing failed for lack of consideration if Plaintiff's contractual commission rights under the Listing were deemed to be void and unenforceable. That issue is now moot, since the this Court has enforced Plaintiff's contractual commission rights under the Listing, thereby eliminating the failure of consideration issue.

When determining the amount of a reasonable attorney's fee pursuant to a contractual agreement, Tennessee courts generally use the following factors set out in the former Tennessee Supreme Court Rule 8 (DR 2-106)[1]:

1. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation, and ability of the lawyer performing the legal service;
8. Whether the fee is fixed or contingent.

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[1] Although Tennessee recently adopted the Rules of Professional Conduct, the current Tenn. Sup. Ct. R. 8 (RPC 1.5) is substantially the same as the prior rule. Compare Tenn. Sup. Ct. R. 8 (RPC 1.5) with Killingsworth v. Ted Russell Ford, Inc., 104 S.W.3d 530, 534 (Tenn. Ct. App. 2002), (quoting DR 2-106).

See Killingsworth v. Ted Russell Ford, Inc., 104 S.W.3d 530, 534 (Tenn. Ct. App. 2002), app. discretionary appeal denied, 2002 Tenn. LEXIS 395 (Tenn. May 5, 2003); see also United Med. Corp. of Tenn., Inc. v. Hohenwald Bank and Trust Co., 703 S.W.2d 133, 136 (Tenn. 1986). These factors are to be used as guides only and the amount of the award ultimately depends "upon a consideration of all the facts and circumstances presented by the record." United Med. Corp. of Tenn., Inc., 703 S.W.2d at 136 (quoting Tennessee United Paint Store, Inc. v. Overmyer, 62 Tenn. App. 721, 467 S.W.2d 806, 810 (1971)).

Out of the eight factors listed above, the ones that are applicable all appear to support the amount requested for attorneys' fees and expenses:

1. The Affidavit of Gerald D. Neenan documents the services required to represent the Plaintiff in this case. This Court is familiar with the questions involved, including the fact that the outcome of the case hinged upon resolving conflicting Tennessee opinions regarding the key legal issue in the case.

2. This factor does not appear applicable in this case.

3. The affidavit of Gerald D. Neenan documents that the requested fee is consistent with fees customarily charged in the locality for similar services on an hourly fee basis.

4. The initial commission sought by Plaintiff is in the amount of $270,254.46. The total judgment requested by Plaintiff at this time, including prejudgment interest, attorneys' fees and costs is over $460,000.00. Counsel for Plaintiff obtained an excellent result for the Plaintiff, resulting in a summary judgment in the Plaintiff's favor.

5. This factor does not appear applicable to this case.

6. Gerald D. Neenan has represented Grubb & Ellis|Centennial, Inc. for over 20 years.

7. Plaintiff respectfully submits that the experience, reputation and ability of Plaintiff's attorneys supports the amount of the requested attorneys' fees.

8. Neal & Harwell's fee agreement with Plaintiff calls for a one-third contingency fee plus reimbursement of expenses. If Plaintiff obtains the full amount of the judgment requested in this Memorandum, Plaintiff will owe attorneys' fees in the range of $150,000.00 under the contingent fee arrangement. In that event, the attorneys' fees requested by Plaintiff in this Memorandum will be substantially less than the attorneys' fees owed by Plaintiff to its attorneys, which confirms the reasonableness of the fee requested in this Memorandum.

The Affidavit of Gerald D. Neenan provides the Court with itemized daily time entries describing the work done by Neal & Harwell, PLC in this case and the hourly rates charged for each person. That Affidavit demonstrates that the services performed were necessary to represent the Plaintiff's interests in this case, that the charges for those services were reasonable, and that the expenses incurred on behalf of Plaintiff were reasonable and necessary.

III. PLAINTIFF IS ENTITLED TO PREJUDGMENT INTEREST IN THE AMOUNT OF $61,441.41.

A. Mandatory Prejudgment Interest.

Plaintiff is entitled to prejudgment interest pursuant to T.C.A. § 47-14-109(b), which provides that,

> Liquidated and settled accounts, signed by the debtor, shall bear interest from the time they become due, unless it is expressed that interest is not to accrue until a specific time therein mentioned. [Emphasis added.]

The Listing was signed by Defendants, so Plaintiff is entitled to prejudgment interest if this commission claim is a "liquidated and settled account." This is clearly a liquidated and settled account.

> The requirement of liquidation is satisfied if the amount of the debt is certain or can be made certain by mere computation. Draper v. Great American Insurance Company, 224 Tenn. 552, 458 S.W.2d 428 (1970). In this case, although some contemplated expenditures were not to be determined at the time of the execution of this lease, subsequent events reduced them to a certainty, so that, the amount was known by the time performance was due. This satisfies the requirement of liquidation. Cf., Air Temperature, Inc. v. Morris, 63 Tenn. App. 90, 469 S.W.2d 495 (1970).

Performance Systems, Inc. v. First American National Bank, 554 S.W.2d 616, 618-19 (Tenn. 1977).

Stipulation Exhibit 39 demonstrates that the amount owed to Plaintiff "can be made certain by mere computation." Defendants did the commission computation, which was a simple matter of calculating 1.5% of the total base rent to be paid during the initial term of the Lease, and Plaintiff accepts Defendants' calculations.

B. Discretionary Prejudgment Interest.

If the Court does not award prejudgment interest under T.C.A. § 47-14-109(b), Plaintiff should be awarded prejudgment interest pursuant to T.C.A. § 47-14-123, which provides that:

> Prejudgment interest, i.e., interest as an element of, or in the nature of, damages, as permitted by the statutory and common laws of the state as of April 1, 1979, may be awarded by courts or juries in accordance with the principles of equity at any rate not in excess of a maximum effective rate of ten percent (10%) per annum; provided, that with respect to contracts subject to § 47-14-103, the maximum effective rates of prejudgment interest so awarded shall be the same as set by that section for the particular category of transaction involved. In addition, contracts may expressly provide for the imposition of the same or a different rate of interest to be paid after breach or default within the limits set by § 47-14-103.

Plaintiff should be awarded prejudgment interest in accordance with the principles of equity pursuant to T.C.A. § 47-14-123. When Defendants exercised their right to terminate the

Listing, they invited Plaintiff to submit a list of pending transactions. (Stipulation Ex. 12.) After receiving Plaintiff's list, Defendants promised that ". . . we will honor the list." (Stipulation Ex. 21.) Defendants paid other post termination commissions to Plaintiff, thereby acknowledging that termination of the Listing did not cut off Plaintiff's right to further commissions. (First Smith Aff. ¶ 12; July 31, 2003 Second Affidavit of Barry R. Smith, Docket No. 29 ("Second Smith Aff."), ¶ 4.) Defendants then refused to pay this commission to Plaintiff, and paid it to themselves instead. As a result of their breach of the Listing, Defendants have had Plaintiff's commission for almost three years. It is certainly consistent with the "principles of equity" to award prejudgment interest to Plaintiff under these circumstances.

In Performance Systems, Inc. v. First American National Bank, 554 S.W.2d 616 (Tenn. 1977), the Supreme Court held that the plaintiff (who was entitled to prejudgment interest under T.C.A. § 47-14-109) could have recovered prejudgment interest under T.C.A. § 47-14-123, stating that, "Although the defendant-assignee may have had grounds for believing that it had a legal defense to the claim for rent, it is hard to avoid the conclusion that it was trying to use the plaintiffs' property without paying for it." 554 S.W.2d at 619. Here, Defendants used Plaintiff's property without paying for it by paying Plaintiff's commission to themselves. This Court has determined on summary judgment that Plaintiff is entitled to this commission under the Listing, so the fact that Defendants disputed this claim does not preclude a discretionary award of prejudgment interest pursuant to T.C.A. § 47-14-123.

C. Amount Of Prejudgment Interest.

1. Applicable Interest Rate.

T.C.A. § 47-14-123 (which is quoted in Section B above) provides that the prejudgment interest rate for contracts within the scope of T.C.A. § 47-14-103 shall not exceed the rate that is applicable to such contracts under T.C.A. § 47-14-103. The Listing falls within T.C.A. § 47-14-103(2), which governs all written contracts (except for transactions within the scope of T.C.A. § 47-14-103(1), which is not applicable here). T.C.A. § 47-14-103(2) makes the "formula rate" the applicable maximum interest rate for the Listing. The "formula rate" is a floating rate calculated and announced from time to time by the State of Tennessee pursuant to T.C.A. §§ 47-14-102 and -105. Attached to the Affidavit of John Crow are certified copies of official announcements made by the Department of Financial Institutions pursuant to T.C.A. § 47-14-105 which set forth the formula rate since September 2002. Mr. Crow calculated prejudgment interest on a commission of $270,254.46 using those Tennessee formula rates, in accordance with T.C.A. §§ 47-14-102, -103, -105 and -123. According to his calculations, prejudgment interest at the formula rate through August 31, 2005 equals $61,441.41. The formula rate is the maximum permissible interest rate. This Court has discretion to reduce the amount of the prejudgment interest award if the Court deems that it is appropriate to use a lower interest rate.

2. Date When Interest Began to Accrue.

Plaintiff's prejudgment interest calculations assume that half of the commission was due on October 14, 2002 and the remaining half of the commission was due on March 19, 2003, for the reasons set forth below. This is a very conservative approach, since Defendants deemed the entire commission to already be due and payable by September 30, 2002. Defendants stated in Exhibit 54 of the Stipulation that the 1.5% commission, which they paid to themselves instead of to Plaintiff, was due and payable in full "at execution" of the Lease.

Mr. Crow used October 14, 2002 as the beginning date for calculating prejudgment interest on the first half of the commission. Paragraph 8.2(a) of the Listing provides that: 50% of Plaintiff's commission was due two weeks after Defendants received a fully executed Lease, along with all payments due upon execution of the Lease; and the remaining 50% of Plaintiff's commission was due two weeks after Bridgestone took occupancy and accepted the premises. The Lease was signed on September 6, 2002. (Stipulation ¶ 58.) The effective date of the Lease and Sublease was September 6, 2002. (Stipulation ¶ 60.) The Office Lease Transmittal Form (p.GL001993 in Stipulation Ex. 39) shows that Defendants had received the signed Lease and an invoice for commissions by September 30, 2002. Stipulation Exhibits 39 and 54 prove that by September 30, 2002 the Defendants had already calculated the commissions. No security deposit was required under the Lease (see Lease, Stipulation Exhibit 53, at ¶1x on p. 11), so the initial 50% of the commission was due two weeks after Defendants received the signed Lease. The Lease was signed and effective on September 6, and was received by Defendants no later than September 30. Accordingly, Plaintiff's calculation of prejudgment interest on the first half of the commissions begins on October 14, 2002, two weeks after the latest date when Defendants could have received the Lease.

According to paragraph 8.2(a) of the Listing, the second half of Plaintiff's commission was due two weeks after Bridgestone took possession of the property. Since Defendants have not supplied Plaintiff with the exact date when Bridgestone took possession, Plaintiff calculated prejudgment interest on the second half of the commission beginning on March 19, 2003, which is two weeks after March 5, 2003. Pursuant to paragraph 1(g) of the Lease (pp. GL002009-10 in Stipulation Ex. 53), the "commencement date" of the Lease was no later than 180 days after the "effective date." Since the effective date of the Lease was September 6, 2002 (Stipulation ¶ 60), the commencement date of the Lease was no later than March 5, 2003. Plaintiff believes that this is a conservative date to use for this calculation, since the last sentence of paragraph 1(g) of the Lease (Stipulation Ex. 53, p. GL002010) says that, "Landlord shall deliver, and Tenant shall accept, possession of each floor of the Premises on the Effective Date." Thus, this Court could find that the second half of the commission, which under paragraph 8.2(a) of the Listing was due two weeks after Bridgestone took occupancy of the Premises, was due at the same time as the first half of the commission. If this Court makes that determination, prejudgment interest on the commission at the formula rate would increase by $4,907.16, to a total of $66,348.57. (John Crow Affidavit, ¶ 5.)

IV. PLAINTIFF IS ENTITLED TO ADDITIONAL COMMISSIONS IF THE TERM OF THE LEASE IS RENEWED OR EXTENDED OR THE LEASED PREMISES IS EXPANDED, BUT PLAINTIFF'S ENTITLEMENT TO SPECIFIC FUTURE COMMISSIONS IS NOT RIPE FOR DETERMINATION AT THIS TIME.

In the Order and Memorandum, this Court asked the parties to address whether additional commissions will be due to Plaintiff if Bridgestone continues to lease space in the Tower after the expiration of the original term of the Lease, and whether such commissions are ripe for decision by the Court at this time. Plaintiff believes that the Court appropriately combined those two questions. Plaintiff respectfully submits that the answer to those questions is that: (1) Plaintiff is entitled to additional commissions under Section 8 of the Listing and paragraphs C through F of Exhibit C to the Listing on expansions of the leased premises and on renewals or extensions of the term of the Lease; and (2) Plaintiff's claim for any such additional commissions will not accrue until Bridgestone either renews or extends the term of the Lease or expands the leased premises. Accordingly, Plaintiff respectfully submits that this Court should: declare in its final order that Plaintiff will be entitled to additional commissions under the Listing upon the occurrence of any of the events listed in paragraphs C through F of Exhibit C to the Listing; and instruct Defendants to promptly notify Plaintiff if any of the circumstances specified in paragraphs C through F of Exhibit C of the Listing (renewals or extensions of the Lease or expansions of the leased premises) occur, so that Plaintiff can then determine whether to assert a commission claim under the Listing.

Paragraph 8.4 of the Listing states that "Owner further agrees to pay Broker a commission in accordance to [sic] the schedule . . ." on leases within the scope of paragraph 8.4. This Court has ruled that the Lease falls within the scope of paragraph 8.4. The schedule referenced in paragraph 8.4 is the schedule of commissions attached as Exhibit C of the Listing. Since Exhibit C entitles Plaintiff to commissions on renewals, extensions, and expansions, Defendants' obligation under paragraph 8.4 to pay commissions on the Lease "in accordance to" Exhibit C of the Listing requires Defendants to pay commissions on renewals, extension and expansions of the Lease. If Plaintiff was only entitled commissions on new leases under paragraph 8.4, then paragraph 8.4 would not have referred to Exhibit C in the entirety but would have only made a specific reference to paragraphs A and B of Exhibit C, which address the initial commissions on new leases.

Plaintiff's commissions on any extensions of the Lease will be based on the entire premises occupied by Bridgestone, including the portion of the premises that was initially subleased from TVA. The second to last sentence of paragraph 1g of the Lease (page 8 of the Lease, document GL002010 in Stipulation Ex. 53) says that,

> Rent, at the rates set forth in this Lease, will commence, and the TVA Sublease Space will become part of the Premises under this Lease on the expiration or early termination of the TVA Lease.

This confirms that, upon expiration of the TVA sublease to Bridgestone, the former TVA space will be directly leased by Bridgestone from Defendants pursuant to the Lease. Accordingly, the TVA space will be included when calculating future commissions owed to Plaintiff for extension or renewals of the Lease.

Defendants may contend that paragraph 8.1 of the Listing limits Plaintiff's claim for future commissions to the first ten years of the Lease. However, that is not true for two reasons: Plaintiff's commission claim arises under paragraph 8.4, not under paragraph 8.1; and Defendants have already waived the ten year limit with respect to the Lease. The ten year limit is only found in paragraph 8.1, and there is no ten year limit in paragraph 8.4 of the Listing. Since Plaintiff is not claiming a commission under paragraph 8.1, the ten year limit in paragraph 8.1 is inapplicable. Even if the ten year limit did apply, Defendants have already agreed to pay commissions beyond ten years on the Lease. Plaintiff's commission agreements with Joe Cherry, Bridgestone's broker, are attached as Exhibit 40 to the Stipulation. Paragraph 3 of each of those commission agreements entitles Joe Cherry to a commission if Bridgestone exercises its first renewal option to extend the term of the lease beyond its initial 84-month term. Rider 1 to the Lease (Stipulation Ex. 53, p. GL002091) gives Bridgestone the option to extend the term of the Lease for four additional five-year terms. Defendants have already waived any ten year limit by agreeing to pay commissions to Joe Cherry beyond ten years.

There is a marked difference between the Listing and Defendants' commission agreements with Joe Cherry which confirms that Plaintiff is entitled to commissions on renewals, extensions or expansions of the Lease. Paragraphs 3 and 4 of Defendants' commission agreements with Joe Cherry (Stipulation Ex. 40) impose strict restrictions on his ability to earn additional commissions, including requirements in paragraphs 3 and 4 that Mr. Cherry only gets the commission if ". . . Tenant appoints Broker as its exclusive negotiating agent . . ." for the extension or expansion of the Lease. There is no such requirement in paragraph 8.4 of the Listing. On the contrary, the very purpose of paragraph 8.4 of the Listing is to entitle Plaintiff to commissions on leases in spite of the fact that Plaintiff was not Defendants' leasing agent at the time. The Defendants' commission agreements with Mr. Cherry demonstrate that Defendants knew how to impose restrictions on future commissions in a commission agreement if those restrictions were part of the agreement with the broker. The complete absence of the restrictions found in Mr. Cherry's commission agreement from paragraph 8.4 of the Listing confirms that those restrictions do not apply to paragraph 8.4 of the Listing.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully submits that this Court should enter a judgment against Defendants, jointly and severally, for $270,254.46, plus prejudgment interest in the amount of $61,441.41, plus attorneys' fees and litigation expenses in the amount of $130,778.06. This Court should also declare that Plaintiff will be entitled to additional commissions if the Lease is renewed or extended or if the leased premises are expanded and order Defendants to promptly notify Plaintiff of any extensions or renewals of the Lease or any expansions of the leased premises.

Respectfully submitted,

NEAL & HARWELL, PLC

By: s/ Gerald D. Neenan
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this 20th the day of September, 2005:

( ) Hand	Todd E. Panther, Esq.
(X) Mail	Tune, Entrekin & White, P.C.
( ) Fax	AmSouth Center, Suite 1700
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s/ Gerald D. Neenan